IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 342 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHIKHABHAI JIVABHAI

Appearance:

MR KP RAVAL, APP for the appellant

MR YN RAVANI for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 17/06/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

By this appeal, appellant-State, has challenged the

judgment and order of acquittal dated 24th December, 1992 recorded by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No.45/92, with the aids of the provisions of section 378 of the Code of Criminal Procedure, 1973 (Code, for short).

The respondents, who are accused persons, are relatives of the deceased, Damuben, aged about 30, when she committed suicide. Respondent No.1 is the father-in-law of the deceased, respondent No.2 is the elder brother of her husband, whereas, respondent No.3 is the husband of deceased, Damuben. The prosecution version has been that the deceased Damuben was, mentally, tortured and she was physically beaten by her husband, respondent No.3. She was also scolded and mentally tortured by her husband by calling her as mad-lady. Unfortunately, on 20.10.91 at about 11.30 a.m. she committed suicide. The prosecution case is that the deceased was compelled to commit suicide by the accused persons, by giving her mental and physical torture and cruelty. Therefore, the respondents came to be charged in Sessions Case No.45 of 1992 for the offence punishable under sections 498A and 306 read with 114 of the Indian Penal Code by the learned Additional Sessions Judge, Bhavnagar, to which the accused persons denied and claimed to be tried.

The prosecution placed reliance on eight witnesses. Upon assessment and evaluation of the evidence of the prosecution, the learned Trial Judge, reached to the conclusion that the prosecution has remained unsuccessful in establishing the charges against the accused persons. Being aggrieved by this judgement and order of acquittal, this appeal is filed by the State.

We have heard the learned Additional Public Prosecutor and examined the facts and circumstances and the testimonial collections and documentary evidence.

In order to bring home the charge under section 306 of the IPC, it must be shown by the prosecution that the person has committed suicide and it was abetted by the accused persons. The factum of suicide is not in controversy. It has been proved that deceased Damuben committed suicide on the fateful day by pouring kerosene and setting ablaze. We have not been able to find any material nor we have been shown any evidence from the record of the present case, which would even, remotely, indicate the act of abetment. When there is no dependable evidence with regard to the actual abetment by any of the accused, the accused are entitled to be acquitted. The learned Addl. Public Prosecutor has not

been able to substantiate the charge under section 306 of the Indian Penal Code.

So is the position in case of charge under section 498-A of the IPC. A new dimension of cruelty has been added by incorporating a new provision in IPC by section 498-A, under which a husband or a relative of a woman subjecting her to cruelty to be punished for such an act. Under section 498-A, any willful conduct which is likely to drive a women commits suicide will constitute cruelty. It is incumbent upon the prosecution to prove the material ingredients constituting an act of cruelty which have led to the act committing suicide by the woman.

We have, dispassionately, examined the evidence and we find no substance in this charge against the accused persons. The prosecution has placed reliance on as many as eight witnesses. Even the evidence of the complainant Ex.12, Mohanbhai Jadavbhai, does not reinforce the prosecution case, substantively. The evidence of other witnesses also does not fully support the prosecution case. The material ingredients attracting the rigors of aforesaid two sections of IPC have not been spelt out.

It may be noted, at this juncture, that this is an acquittal appeal under section 378 of the of the Code of Criminal Procedure and it is a settled proposition of law that the powers of an appellate court in an acquittal appeal, like the one on hand, are required to be exercised, if it is, successfully, shown that the view taken by the Trial Court, upon examination and analysis and appreciation of the evidence led by the prosecution is perverse, unreasonable, or is based on non-applciation of mind to the vital evidence or non-consideration of the material evidence led. It is equally true that simply because an appellate court can take a different view upon assessment of the evidence of the prosecution, that by itself would not constitute a sufficient ground to exercise the powers of the Court under section 378 of the Code. Appellate Court has to consider as to whether the ultimate conclusion recorded by the Trial Court upon appreciation of the evidence, and if the same is noticed to be plausible or probable, the appellate Court, while hearing the appeal, under section 378 of the Code, would be at loath to interfere with the judgment and order of acquittal. In our opinion, on going through the entire version of the prosecution, the evidence relied on and led by the prosecution and the submissions raised before us, it is clear that the view taken by the learned Trial Judge on assessment and appreciation of evidence is reasonable. Therefore, this appeal is meritless and

deserves to be dismissed.

Accordingly, the appeal shall stand dismissed. The respondents-original accused persons are on bail and, therefore, the bail bond shall stand cancelled, forthwith.

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(vjn)